

**APR 19 2006**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

LIDIA MNATSAKANOVA,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney  
General,

Respondent.

No. 04-72527

Agency No. A75-631-603

MEMORANDUM\*

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted April 13, 2006\*\*

Before: SILVERMAN, McKEOWN, and PAEZ, Circuit Judges.

Lidia Mnatsakanova, a native of the former Soviet Union and a putative citizen of Azerbaijan, petitions for review of the order of the Board of Immigration Appeals (“BIA”) granting her motion to reopen, and concluding that the

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

immigration judge (“IJ”) properly denied her applications for asylum, withholding of removal, and protection under the Convention Against Torture (“CAT). We have jurisdiction under 8 U.S.C. § 1252. We review the BIA’s decision for substantial evidence. *Andriasian v. INS*, 180 F.3d 1033, 1040 (9th Cir. 1999). We grant the petition for review.

An application for asylum must be denied if the alien has firmly resettled in another country. *See* 8 U.S.C. § 1158(b)(2)(A)(vi). An alien is not “firmly resettled” if the “conditions of . . . her residence in that country were so substantially and consciously restricted by the authority of the country of refuge that . . . she was not in fact resettled.” 8 C.F.R. § 1208.15(b). Mnatsakanova’s uncontradicted testimony described widespread harassment in Georgia, as well as a restrictive and discriminatory system of “registration.” *See Andriasian*, 180 F.3d at 1043-47 (holding that an ethnic Armenian from Azerbaijan had not firmly resettled in Armenia because he was harassed and threatened, and accused of being loyal to the Azerbaijanis). Substantial evidence therefore does not support the BIA’s conclusion that Mnatsakanova’s Georgian travel document establishes firm resettlement.

We remand for further proceedings because the BIA decision under review did not reach the merits of Mnatsakanova’s asylum, withholding and CAT claims

with respect to Azerbaijan. In addition, it is unclear whether Mnatsakanova was given sufficient opportunity to apply for asylum or withholding with respect to Georgia once it became clear that the hearing before the IJ would focus on her time in Georgia. *See Andriasian*, 180 F.3d at 1041 (raising due process concerns where country of firm resettlement is designated as alternative in removal order).

**PETITION FOR REVIEW GRANTED; REMANDED.**